CASE NO. 80-6757

IN THE SUPREME COURT OF THE UNITED STATES

_____ TERM, 1981

RECEIVED
MAY 29 1981
OFFICE OF THE CLERK
SUPREME COURT, U.S.

GARY LEE McCOLPIN,

PETITIONER,

VS.

ROBERT A. ATKINS,

RESPONDENT.

ON APPEAL FROM THE COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

BY: GARY LEE McCOLPIN
POST OFFICE BOX 2
LANSING, KANSAS
66043

IN PROPRIA PERSONA, PRO SE

IN THE SUPREME COURT OF THE UNITED STATES

_____ TERM, 1981

CASE NO. _____

GARY LEE McCOLPIN,

PETITIONER,

VS,

ROBERT A. ATKINS,

RESPONDENT.

PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF THE UNITED STATES

TO THE HONORABLE, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES.

GARY LEE McCOLPIN, THE PETITIONER HEREIN, PRAY THAT A WRIT OF CERTIORARI ISSUE TO REVIEW THE JUDGMENT OF THE COURT OF APPEALS FOR THE TENTH CIRCUIT ENTERED IN THE ABOVE ENTITLED CASE ON 31 MARCH, 1981, et AL.

QUESTIONS PRESENTED

A) WHETHER THE PETITIONER HAD HIS RIGHTS, PRIVILEGES AND IMMUNITIES OF THE SIXTH AND FOURTEENTH AMENDMENTS OF THE CONSTITUTION OF THE UNITED STATES VIOLATED?

B) WHETHER THE DISTRICT COURT IS IN ERR AS TO THE 'MOTION FOR APPOINTMENT OF COUNSEL', THAT WAS NEVER ANSWERED?

C) WHETHER THE PETITIONER WAS DENIED HIS RIGHTS FOR AN 'EVIDENTIARY HEARING' BEFORE THE DISMISSAL BY THE DISTRICT COURT?

TABLE OF CONTENTS

INTRODUCTION _____ P.1

QUESTIONS PRESENTED _____ P.1

TABLE OF AUTHORITIES _____ P.2

OPINIONS BELOW _____ P.

JURISDICTION _____ P.2

STATUTES INVOLVED _____ P.2

STATEMENT _____ P.3

REASONS FOR GRANTING THIS WRIT _____ P.3

CONCLUSION _____ P.3

APPENDIX 1
ORDER OF THE DISTRICT COURT DISMISSING SAID ACTION.

APPENDIX 2
SO-CALLED MOTION TO PROCEED IN FORMA PAUPERIS.

STATUTES

18 U.S.C.S 3006 A(G)
28 U.S.C.S 2254
28 U.S.C.S 1254

CONSTITUTIONAL PROVISIONS

AMENDMENT VI, UNITED STATES CONSTITUTION
AMENDMENT XIV, UNITED STATES CONSTITUTION

JURISDICTION

THE JURISDICTION OF THE COURT IS INVOKED PURSUANT TO 28 U.S.C., SECTION 1254, CONFERING ON THIS COURT THE POWER TO REVIEW FINAL JUDGMENTS RENDERED BY THE COURTS OF APPEALS, IN THIS INSTANCE, THE CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT, BY WRIT OF CERTIORARI, WHERE ANY RIGHTS, PRIVILEGES AND IMMUNITIES ARE SPECIALLY SET UP OR CLAIMED UNDER THE CONSTITUTION OF THE UNITED STATES. THE PETITIONER FEELS THAT THE CIRCUIT COURT AND THE DISTRICT COURT HAVE ERRED.

Statement

Petitioner believes that men should appeal to the civil law for redress of all wrongs and grievances, where personal abuse is inflicted or the right of property or character infringed, where such laws exist as will protect the same; but Petitioner believes that all men are justified in defending themselves, their friends, and property, and the government, from the unlawful assaults and encroachments of all persons in times of exigency, where immediate appeal cannot be made to the laws, and relief afforded.

On the 11th of August, 1980 Petitioner filed a motion for the appointment counsel in the District court. This action was in good faith under 18 U.S.C. § 3006 A(G). Petitioner motion was along with his Petition for a writ of Habeas corpus pursuant to 28 U.S.C. section 2254. The District court never acted upon said motion.

Petitioner feels that an injustice has been done to him and now looks to the Honorable court to review and rectify the unconstitutional violations, that have plagued him throughout this case.

Conclusion

Petitioner, prays, the Honorable court; will take full jurisdiction in the instant matter, so that he may enjoy the 'equal protection' and 'due process' of the laws of the United States, that he has been continually denied by, the District court, having been the original trial court in this matter.

Petitioner, for the foregoing reasons feels that this Petition for writ of certiorari should be granted.

Respectfully submitted,

Gary Lee McColgin

Gary Lee McColgin, Prose
Post Office Box 2
Lansing, Kansas
66043
In Propria Personam

Dated: 27 May 1981

United States Court of Appeals
TENTH CIRCUIT
OFFICE OF THE CLERK
469 UNITED STATES COURTHOUSE
DENVER, COLORADO 80202

HOWARD K. PHILLIPS
CLERK

May 19, 1981

80-6757

RECEIVED
MAY 29 1981
OFFICE OF THE CLERK
SUPREME COURT, U.S.

Gary Lee McColpin
Reg. No. 31362
P.O. Box 2
Lansing, KS 66043

Re: No. 81-1010; McColpin vs. Atkins.

Dear Mr. McColpin:

Your motion for appointment of counsel has been received but not filed in the captioned case.

On March 31, 1981, this court denied certificate of probable cause in this case. That order terminated your right to proceed before this court. This case is closed.

Very truly yours,

HOWARD K. PHILLIPS

By: Robert L. Hoecker
Chief Deputy Clerk

RLH/kh
enclosure: Check No. 46117 ($.50)
cc: Elsbeth D. Schafer, Assistant Attorney General, State of Kansas, Judicial Center, 2nd Floor, Topeka, KS 66612

MARCH TERM - March 31, 1981

80-6757

Before Honorable James E. Barrett, Circuit Judge, United States Court of Appeals

GARY LEE McCOLPIN,	)	
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	No. 81-1010
	)	
ROBERT A. ATKINS,	)	
	)	
Defendant-Appellee.	)	

This matter comes on for consideration of appellant's motion to proceed in forma pauperis on appeal, which we additionally construe to be an application for certificate of probable cause.

Upon consideration thereof, the motion and application are denied for the reasons stated in the district court's memorandum and orders filed October 31, 1980 and December 19, 1980.

Howard K. Phillips

HOWARD K. PHILLIPS, Clerk

CIV 32
(7/83)

JUDGMENT ON DECISION BY THE COURT

80-6757

United States District Court

FOR THE

DISTRICT OF KANSAS

CIVIL ACTION FILE NO. 80-3155

GARY LEE McCOLPIN,

Petitioner,

vs.

ROBERT A. ATKINS,

Respondent.

JUDGMENT

This action came ~~on for trial (hearing),~~ before the Court, Honorable Dale E. Saffels, United States District Judge, presiding. ~~The issues have been duly tried~~ and a decision having been duly rendered,

It is Ordered and Adjudged that all relief be denied, and that the action be and it hereby is dismissed.

FILED

DEC 19 1980

ARTHUR G. JOHNSON, Clerk

By Cheryl Master Deputy

Dated at Topeka, Kansas, this 19th day of December, 1980.

ARTHUR G. JOHNSON

Clerk of Court

Cheryl Master

Deputy

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF KANSAS

GARY LEE McCOLPIN, Petitioner,	)	
vs.	)	NO. 80-3155
ROBERT A. ATKINS, Respondent.	)	

O R D E R

On October 28, 1980, this Court, by the Honorable Chief Judge Frank G. Theis, entered a Memorandum and Order finding that the filings herein by petitioner Gary Lee McColpin did not allege facts to support the claims, and the Court thereupon granted petitioner twenty (20) days from that date in which to file supplemental allegations regarding the facts which might support the claims herein.

This file now includes additional factual allegations, which were filed by the petitioner on November 7, 1980, and also an amendment to the factual allegations which was filed on November 12, 1980, and which the Court has fully examined.

THEREFORE, the Court, having examined all the pleadings and attachments filed in this case, again finds that no claim is stated, and that the action should be dismissed. 28 U.S.C. 1915 (d).

IT IS THEREFORE BY THE COURT ORDERED that leave to proceed in forma pauperis again be granted, that this action be dismissed and all relief denied, and that the Clerk of this Court transmit copies of this Order to plaintiff and defendant.

DATED: This 17th day of December, 1980, at Kansas City, Kansas.

FILED

DEC 19 1980

ARTHUR G. JOHNSON, Clerk

/s/ DALE E. SAFFELS

DALE E. SAFFELS
United States District Judge